

# 2008 Instructions for Form FTB 3805V

## Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations — Individuals, Estates, and Trusts

References in these instructions are to the Internal Revenue Code (IRC) as of **January 1, 2005**, and the California Revenue and Taxation Code (R&TC).

### What's New

#### Bioscience Activities NOLs

~~Beginning January 1, 2008, taxpayers can elect to deduct a NOL for qualified bioscience activities over a period of 20 years. The qualified bioscience activities are described in Codes 325411 to 325414 and 541710 of the North American Industry Classification System (NAICS). Taxpayers must attach a statement to their original, timely filed return in which the net operating loss occurred.~~

### General Information

In general, California law conforms to the Internal Revenue Code (IRC) as of **January 2005**. However, there are continuing differences between California and federal law. When California conforms to federal tax law changes, we do not always adopt all of the changes made at the federal level. For more information, go to our website at [ftb.ca.gov](http://ftb.ca.gov) and search for **conformity**. Additional information can be found in FTB Pub. 1001, Supplemental Guidelines to California Adjustments, the instructions for California Schedule CA (540 or 540NR), and the Business Entity tax booklets.

The instructions provided with California tax forms are a summary of California tax law and are only intended to aid taxpayers in preparing their state income tax returns. We include information that is most useful to the greatest number of taxpayers in the limited space available. It is not possible to include all requirements of the California Revenue and Taxation Code (R&TC) in the tax booklets. Taxpayers should not consider the tax booklets as authoritative law.

#### Nonresidents and Part Year Residents

~~For taxable years that began in 2002 and 2003, California suspended the NOL carryover deduction. Taxpayers continued to compute and carryover an NOL during the suspension period. The deduction for disaster losses was not affected by the NOL suspension rules.~~

For taxable years beginning on or after January 1, 2002, the NOL carryover computation for the California taxable income of a nonresident or part-year resident is no longer limited by the amount of net operating loss from all sources. Only your California sourced income and losses are considered in determining if you have a California NOL.

#### Change of Residency to California

For taxable years beginning on or after January 1, 2002, if you have NOL carryovers and were a nonresident of California in prior years, the NOL carryovers must be restated as if you had been a California resident for all prior years.

#### Change of Residency from California

For taxable years beginning on or after January 1, 2002, if you have NOL carryovers and you become a nonresident of California, your NOL carryovers must be restated as if you had been a nonresident of California for all prior years.

If your residency status changes from the time you generate the NOL carryover to the time you apply the NOL deduction, you will need to recompute the NOL carryover amount. For more information, get FTB Pub. 1100, Taxation of Nonresidents and Individuals Who Change Residency.

#### Round Cents to Dollars

Round cents to the nearest whole dollar. For example, round \$50.50 up to \$51 or round \$25.49 down to \$25. If you do not round, the Franchise Tax Board (FTB) will disregard the cents. ~~This change helps process your returns quickly and accurately.~~

### A Purpose

Individuals, Estates, or Trusts use form FTB 3805V, Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations — Individuals, Estates, and Trusts, to figure the current year NOL and to limit the NOL carryover and disaster loss deductions.

Form FTB 3805V is divided into three parts:

- Part I: Computation of Current Year NOL.
- Part II: Determine Modified Taxable Income (MTI). MTI is the amount of your taxable income that can be offset by your prior years' NOL carryover.
- Part III: NOL Carryover and Disaster Loss Carryover Limitations.

Corporations use form FTB 3805Q, Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations — Corporations.

### B Types of NOLs

**Net Operating Losses and Disaster Losses** — If your deductions for the year exceed your income, you may have an NOL carryover. The California NOL is generally figured the same way as the federal NOL. The table on page 2 describes the various types of losses and shows the carryover percentages and periods for each type. However, under California law:

- An NOL may be carried over only to future years. No carrybacks are allowed (except for specified disaster losses).
- Carryover periods and percentages vary with the type of California NOL.
- You can elect an NOL from an activity within the following areas or zones to offset income earned solely within those areas or zones:
  - 1) Enterprise Zone (EZ). Get FTB 3805Z, Enterprise Zone Business Booklet, for more information.
  - 2) Local Agency Military Base Recovery Area (LAMBRA). Get FTB 3807, Local Agency Military Base Recovery Area Business Booklet, for more information.
  - 3) Targeted Tax Area (TTA). Get FTB 3809, Targeted Tax Area Business Booklet, for more information.

- ~~• You can elect to take an extended carryover for certain bioscience activities.~~

#### NOLs Suspended for 2002 and 2003

California suspended the NOL carryover deduction for taxable years 2002 and 2003. During the suspension period, taxpayers continue to compute and carryover the NOL. California extended the carryover period two years for NOLs incurred before January 1, 2002 **extended two years**. For NOLs incurred between January 1, 2002 and January 1, 2003, California **extended the carryover period for one year**.

The 2002 and 2003 NOL suspension did not affect disaster loss deductions.

California reinstated the NOL carryover deduction for taxable years beginning on or after January 1, 2004.

### C Nonresidents and Part-Year Residents

**Nonresidents:** Complete Part I, Section B, column A and column B.

**Part-Year Residents:** Complete Part I, Section B, column A through column E.

**Nonresidents and Part-Year Residents:** Do not fill out Part I, Section A.

### Specific Line Instructions

#### Part I — Current Year NOL

Use Part I to figure your current year NOL, if any, to carry over to future years.

If you have losses from more than one source and/or more than one category, it may be necessary to compute the allowable NOL carryover for each loss separately.

If you do not have a current year NOL, skip Part I and go to Part II.

If you have a current year NOL relating to an EZ (R&TC Section 17276.2), LAMBRA (R&TC Section 17276.5), or TTA (R&TC Section 17276.6), you must:

- Make the election in a statement attached to the original return to carry over only one of these losses or the loss under R&TC Section 17276 (relating to general NOLs).
- Use the applicable economic development area form to calculate the NOL.

The election is **irrevocable**. Get FTB 3805Z, Enterprise Zone Business Booklet; FTB 3807, Local Agency Military Base Recovery Area Business Booklet; or FTB 3809, Targeted Tax Area Business Booklet, for more information.

~~If you have a current year NOL relating to a qualified bioscience activity, you may elect to carryover the NOL up to 20 years. To make the election, you must:~~

- ~~• Have a NOL from a qualified bioscience activity. Qualified bioscience activities are defined in the North American Industry Classification Systems codes 325411 to 325414 and 541710.~~
- ~~• Attach a statement to the original return electing carry over loss up to 20 years.~~
- ~~• File the original return in a timely manner.~~

### Section A — Individuals, Estates, and Trusts

**Line 3** — Estates or Trusts, enter the amount from your 2008 Form 541, line 20 or Form 109, line 14.

**Line 4 through Line 7** — You may deduct nonbusiness capital losses up to the amount of nonbusiness capital gains. You may not deduct any excess nonbusiness capital losses over nonbusiness capital gains.

Nonbusiness capital losses and gains are losses and gains from other than a trade or business. These include sales of stock, metals, and other appreciable assets as well as any recognized gain from the sale of your principal residence.

Enter your nonbusiness capital gains without regard to any R&TC Section 18152.5 exclusion.

**Line 8** — Enter deductions that are not related to a trade or business and are not related to your employment (such as taxes, medical expenses,

Type of NOL and Description	Taxable Year NOL Incurred	NOL Carried Over	Carryover* Period
<b>General NOL (GEN)</b> Available as a result of a loss incurred in years after 1986 allowed under R&TC Section 17276. (Does not include losses incurred from activities that qualify as a new business or an eligible small business [described below], an EZ, LARZ, LAMBRA, TTA, disaster loss, or a loss due to Pierce's disease and its vectors).	2004-2008 2002-2003 2000-2001 1987-1999	100% 60% 55% None	10 years 10 Years 10 Years Expired
<b>Disaster Losses (DIS)</b> Casualty losses sustained as the result of a disaster, not reimbursed by insurance or otherwise, and designated by the President of the United States or the Governor of California to warrant assistance. If the loss qualifies under IRC Section 165(i), the taxpayer may elect to deduct the loss from the previous year's income. If special legislation is enacted under the R&TC, 100% of the excess loss may be carried over for up to five years. If any excess loss remains after the five year period, 50% of that remaining loss may be carried over for up to ten additional taxable years for losses incurred in any taxable year beginning before January 1, 2000; 55% for losses incurred in any taxable year beginning on or after January 1, 2000, and before January 1, 2002; 60% for losses incurred in any taxable year beginning on or after January 1, 2002, and before January 1, 2004; or 100% for losses incurred in any taxable year beginning on or after January 1, 2004.	See "Designated Disasters" on next page	100%  See Description	First 5 Years  10 Years Thereafter
<b>New Business NOL (NB)</b> Refer to Franchise Tax Board Legal Ruling 96-5 issued August 19, 1996. Incurred by a trade or business that first commenced in California on or after January 1, 1994. During the first three years of business, 100% of an NOL may be carried over for an extended period, but only to the extent of the net loss from the new business. If a taxpayer's NOL exceeds the net loss from the new business, the excess may be carried over as a general NOL. If a taxpayer acquires assets of an existing trade or business which is doing business in California, the trade or business thereafter conducted by the taxpayer or related persons (IRC Sections 267 or 318) is not a new business if the fair market value (FMV) of the acquired assets exceeds 20% of the FMV of the total assets of the trade or business. If a taxpayer or related person has been engaged in a trade or business in California within the preceding 36 months and thereafter commences an additional trade or business in California, the additional trade or business qualifies as a new business only if the activity is classified under a different division of the Standard Industrial Classification (SIC) Manual, 1987 Edition. Business activities conducted by the taxpayer or related persons wholly outside California are disregarded in determining whether the trade or business conducted within California is a new business. The term "new business" includes any taxpayer engaged in biopharmaceutical activities or other biotechnology activities described in Codes 2833 to 2836 of the SIC Manual, 1987 Edition. It also includes any taxpayer that has not received regulatory approval for any product from the United States Food and Drug Administration. See R&TC Section 24416(g)(7)(A) for more information.	Beginning on or after 1/1/00  Beginning on or after 1/1/94 and before 1/1/00  Year of Business Activity Year 1 Year 2 Year 3	100% For the first three years of business    100% 100% 100%	10 Years    8 Years 7 Years 6 Years
<b>Eligible Small Business (ESB)</b> Refer to Franchise Tax Board Legal Ruling 96-5 issued August 19, 1996. Incurred in operating a trade or business activity that has gross receipts, less returns and allowances, of less than \$1 million during the taxable year. 100% of an NOL may be carried over, but only to the extent of the net loss from the eligible small business. If a taxpayer's NOL exceeds the net loss from an eligible small business, the excess may be carried over as a general NOL. Taxpayers should use the same SIC Code tests described in the "New Business NOL," above, to group trade or business activities for the eligible small business NOL.	Beginning on or after 1/1/00  Beginning on or after 1/1/94 and before 1/1/00	100%  None	10 Years  Expired
<b>Title 11 Bankruptcy (T11)</b> NOL incurred from 1987 through 1993 by corporations who were under the jurisdiction of the court in Title 11 Bankruptcy or similar case proceedings prior to January 1, 1994. (Expired)	1987-1993	None	Expired
<b>Bioscience Activity NOLs</b> <del>Qualified taxpayers can elect to have a 20-year carryover period to deduct NOLs incurred from certain biopharmaceutical and other biotechnology (bioscience) business activities. A "qualified taxpayer" is defined as a taxpayer engaged in bioscience activities described in Codes 325411 to 325414 and 541710 of the North American Industry Classification System (2002 edition and as further amended).</del>	<del>2008</del>	<del>100%</del>	<del>20 years</del>

alimony, charitable contributions, and your contributions to individual retirement plans). If you do not itemize your deductions, your nonbusiness deductions include the standard deduction. A casualty loss is considered a "business expense" regardless of whether it is connected with a trade or business; do not include it as a nonbusiness deduction.

**Line 9** – Enter income that is not related to a trade or business (such as dividends, pensions, annuities, income from an endowment, or interest earned on investments).

**Line 11 and Line 12** – You may subtract nonbusiness deductions only from nonbusiness income, including any nonbusiness capital gains that remain after deducting nonbusiness capital losses. If your nonbusiness deductions are larger than your nonbusiness income, you may not deduct the excess.

**Line 16** – You may deduct business capital losses only up to the total of business capital gains and any nonbusiness capital gains that remain after deducting nonbusiness capital losses and other nonbusiness deductions.

Enter your business capital gains without regard to any R&TC Section 18152.5 exclusion.

**Line 19** – Enter the amount of gain from small business stock that you excluded from gross income

under R&TC Section 18152.5 (enter as a positive number).

**Line 25** – Enter the amount of your prior year NOL and disaster loss carryover from your 2007 form FTB 3805V, Part III, line 5 and line 6.

**Line 27** – Enter the amounts from line 27 on Part III, line 4, column (d) and column (h). If you have an NOL from more than one source, list each loss separately.

If you have an NOL or disaster loss from prior years (line 25), complete Part II and Part III, to determine the loss carryover to future years.

**Long Form 540NR filers:** Complete Part I, Section B, to determine your California NOL carryover.

## Section B — Nonresidents and Part-Year Residents

**Full-Year Nonresidents:** Complete Part I, Section B, column A and column B. Enter amounts from line 27 on Part III, line 4, column (d) and column (h).

**Part-Year Residents:** Complete Part I, Section B, column A through column E.

Enter the number of days during the year you were a California resident: \_\_\_\_\_

Enter the number of days during the year you were a nonresident: \_\_\_\_\_

**Complete column A**, line 1 through line 27 as if you were a California resident for the entire year.

**Line 1** – Enter the amount from Long Form 540NR, line 17.

**Line 2** – Enter the amount from Long Form 540NR, line 18.

**Complete column B**, line 1 through line 27 if you were a nonresident for the entire year.

**Line 1** – Enter the amount from Long Form 540NR, line 21.

**Line 2** – Enter the amount from Schedule CA (540NR), line 48.

**Complete column C and D**, line 1 through line 27 using the dates of transactions. If the dates are unknown because they were not specifically reported to you, then you will need to prorate the amounts. For column C, multiply the amount in column A by the number of days you were a resident divided by 365 days. For column D, multiply the amount in column B by the number of days you were a nonresident divided by 365 days.

**Column E, line 27** enter this amount on Part III, line 4, column (d) and column (h).

## Part II — Modified Taxable Income (MTI)

Use this part if:

- You are carrying over an NOL from years prior to 2008.
- You are carrying over a disaster loss from years prior to 2008.
- You have an unused 2008 disaster loss to carry over.

The purpose of this part is to figure your MTI. You must make certain modifications to your taxable income to determine how much you can carry over to next year. Your carryover to next year is the excess of your NOL deduction over your MTI.

Use this part to determine what your 2008 income (loss) was before taking any NOL carryover disaster loss, or disaster loss carryover deductions. This adjusted amount is called your MTI.

**Line 1 – Form 540 filers:** Subtract Form 540, line 18 from Form 540, line 17. If negative, use brackets.

**Form 541 filers:** Subtract Form 541, line 18 from Form 541, line 17. If negative, use brackets.

**Long Form 540NR filers:** Subtract Schedule CA (540NR), line 48 from Schedule CA (540NR), line 45. If negative, use brackets.

**Line 2 –** Enter as a positive number the net capital loss deduction from your 2008 Schedule D (540NR), line 9 or Schedule D (541), line 10.

**Long Form 540NR filers:** To figure your MTI, enter your net capital loss from your 2008 Schedule CA (540NR), line 13, column E, determined in accordance with Schedule D (540NR).

**Line 3 –** Enter as a positive number the disaster loss carryover deduction from your 2008 Schedule CA (540), line 21b, column B or Form 541, line 15a.

**Long Form 540NR filers:** To figure your MTI, enter the disaster loss carryover deduction amount from your 2008 Schedule CA (540NR), line 21, column E.

**Line 4 –** Enter as a positive number the NOL carryover deduction from your 2008 Schedule CA (540), line 21d, column B or Form 541, line 15a.

**Long Form 540NR filers:** To figure your MTI, enter the disaster loss carryover deduction amount from your 2008 Schedule CA (540NR), line 21, column E.

## Part III — Limitations

Keep a copy of this form with your records until you use all losses or they expire. Use this section to:

- Figure the NOL and disaster loss deduction actually taken in 2008 and the total disaster losses and NOL to be carried over to future years.
- Keep track of the expiration and limitations of any unused carryovers.

**Nonresidents or Part-Year Residents:** If you were a nonresident or part-year resident during the year, get FTB Pub. 1100, Taxation of Nonresidents and Individuals Who Change Residency, for more information.

**When to use an NOL carryover –** Use your NOLs and disaster losses in the order the losses were incurred. There is no requirement to deduct NOL carryovers, if allowed, before disaster loss carryovers.

**Line 1 –** Enter the MTI from Part II, line 5. This is the maximum NOL carryover deduction you are allowed for 2008. NOL carryover amounts in excess of MTI may be eligible for carryover to 2009. See General Information B, Types of NOLs.

**Line 2**

**Column (a) –** Enter the year(s), earliest first, the loss was incurred.

If the loss is from a new business or eligible small business, enter the SIC Code for the new business or eligible small business from the Standard Industrial Classification Manual. If this is a farming enterprise, enter the agricultural activity code from federal Schedule F.

If the loss is from a pass-through entity, such as a partnership, S corporation, or limited liability company (LLC), enter the partnership's FEIN, the California corporation number, or the LLC's Secretary of State file number from Schedules K-1 (100S, 565, or 568).

**Column (b) –** If the loss is due to a disaster, enter the disaster code from the list of designated disasters on this page.

### Designated Disasters

Year	Code	Event
2008		Butte County Wildfires
2007		Wind Damage (10/2007)
2007	34	Southern California Wildfires
2007	33	Santa Barbara and Ventura County Fires
2007	32	El Dorado County Wildfires
2007	31	California Severe Freeze: (01/07)
2006	30	Riverside and Ventura County Wildfires
2006	29	San Bernardino County Wildfires
2006	28	Northern California flooding, mudslides, and landslides (03/06 to 04/06)
2006	27	Northern California flooding, mudslides, and landslides (12/05 to 01/06)
2004	26	Shasta County Wildfires
2005	25	Southern California flooding, debris flows, and mudslides
2004	24	San Joaquin Levee Break
2003	23	San Simeon Earthquake
2003	22	Southern California Fires and other related casualties
2000	21	Napa County earthquake
1999	19	Winter Freeze 98/99
1998	18	El Niño 98
1997	17	Disaster floods 96/97
1996		
1995	15	Storms, flooding, and other related casualties
1994	14	San Luis Obispo fire and other related casualties
1994	13	Los Angeles, Orange, and Ventura County earthquake and other related casualties
1993	12	Storms, floods, and other related casualties (expired)*

\*Taxpayers who elected to deduct the disaster loss in the prior year under IRC Section 165(i), the final year to deduct the disaster loss carryover was last year. Taxpayers who did not elect IRC Section 165(i), the final year to deduct the disaster loss carryover is this year.

You may elect to claim a disaster loss in the year prior to the year in which the disaster occurred if the President declared the event a disaster eligible for emergency assistance. Get instructions for federal Form 4684, Casualties and Thefts, for information about when the election must be filed.

**Column (c) –** Enter the type of NOL from the table in General Information B, Types of NOL and Description. If using Pierce's Disease or an economic development area (EDA) NOL, get the applicable form for the NOL type.

**Column (d) –** Enter the amount of the initial loss related to the year entered in column (a) on the same line.

**Column (e) –** Enter the amount from your 2007 form FTB 3805V, Part III, column (h). You should have already applied the applicable percentage to any remaining disaster loss carryover. See General Information B, Types of NOLs for more information.

**Column (f) –** Enter the smaller of the amount in column (e) or the balance in column (g). If column (g) of the previous line has been reduced to zero, your remaining NOL carryover may be eligible for carryover to 2009. See General Information B, Types of NOLs.

**Column (g) –** Subtract column (f) from the balance in column (g) of the previous line and enter the result.

**Column (h) –** Subtract the amount in column (f) from the amount in column (e) and enter the result. After the initial five year disaster loss carryover, apply the applicable percentage to any remaining disaster loss carryover. See General Information B, Types of NOLs for more information.

If you elect to have a current year NOL relating to one of the following areas or zones and need more information:

- EZ (R&TC Section 17276.2), get form FTB 3805Z.
- LAMBRA (R&TC Section 17276.5), get form FTB 3807.
- TTA (R&TC Section 17276.6), get form FTB 3809.

Then, you must:

- Make the election in a statement attached to the original return to carry over only one of these losses or the loss under R&TC Section 17276 (relating to general NOLs).
- Use the applicable economic development area form to calculate the NOL.

This election is irrevocable.

### Current Year NOLs

If a disaster loss occurs between the date of the publication and the end of the taxable year, go to our website at [ftb.ca.gov](http://ftb.ca.gov) for an updated version of this form, which will include information for any subsequent disaster loss. Then follow the line 3 instructions.

### Line 3 – Current Year Disaster Loss

Use line 3 to claim your 2008 disaster loss.

**Column (a) –** The year the loss was incurred -2008- is entered.

**Column (b) –** Enter the disaster loss code.

**Column (c) –** The type of NOL -DIS- is entered.

**Column (d) –** Enter your 2008 disaster loss from Part I, line 3b. However, if you elected to claim your 2008 disaster loss on your 2007 return, enter on line 2 the carryover amount from your 2007 form FTB 3805V, Part III, line 6.

**Column (f) –** Enter the smaller of the amount in column (d) or the balance in column (g) of the previous line.

**Column (h) –** Subtract the amount in column (f) from the amount in column (d) and enter the result in column (h).

**Line 4 –** If you have a current year NOL from more than one source, list each loss separately.

If you operate one or more new businesses and one or more eligible small businesses, the following rules apply. Determine the amount of the loss attributable to the new business(es) and to the eligible small business(es). Then take the NOL in the following order:

- The new business NOL.
- The eligible small business NOL.
- Any remaining NOL (treat as an NOL under the general rules).

**Line 5 – NOL carryover –** Total the carryover amounts from column (h) that are NOT the result of a disaster loss.